Filed 5/12/10 Flores v. Kaman Indus. Technologies Corp. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

DOROTEO FLORES,

Plaintiff and Appellant,

v.

KAMAN INDUSTRIAL TECHNOLOGIES CORPORATION,

Defendant and Respondent.

F054799

(Super. Ct. No. 05C0260)

OPINION

APPEAL from a judgment of the Superior Court of Kings County. Peter M. Schultz, Judge.

Magill Law Offices and Timothy V. Magill for Plaintiff and Appellant.

Parichan, Renberg & Crossman and Michael L. Renberg for Defendant and Respondent.

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Plaintiff appeals from the judgment entered in favor of defendant, Kaman Industrial Technologies Corporation, after its motion for summary judgment was granted.

We agree with the trial court that plaintiff failed to raise a triable issue of fact in response to defendant's showing and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a complaint against Dalena Farms, Frank Dalena, Joe Dalena, and Doe defendants alleging that, while he was using a conveyor belt system manufactured by defendants, he injured his right hand and forearm. The complaint contained various causes of action sounding in negligence, breach of warranty, and strict products liability. Plaintiff subsequently filed a Doe amendment, identifying the party sued as Doe 5 as Kaman Industrial Technologies Corporation (Kaman).[1] On July 27, 2007, Kaman filed a motion for summary judgment, contending plaintiff could not establish that any product supplied by Kaman was defective or caused or contributed to plaintiff's injury. Plaintiff opposed the motion, contending in part that Kaman failed to warn of dangers posed by the conveyor belt system. Kaman presented further facts and supporting evidence in response to plaintiff's contention, and the court continued the hearing to permit Kaman to file a supplemental separate statement of undisputed facts and plaintiff to respond to it. After further papers were filed and the court heard oral argument, the motion was granted.

Facts presented in support of and opposition to the motion for summary judgment indicate plaintiff was working on a conveyor belt system called the super sack machine on the premises of Dalena Farms, when he reached with his left hand to remove debris from the conveyor belt and placed his right hand on the conveyor belt. His right hand became caught at the end of the conveyor belt. Dalena Farms designed and constructed the super sack conveyor belt system. Kaman supplied the Baldor motor and Dodge

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1 Plaintiff subsequently identified other Doe defendants, including Baldor Electric Company and Reliance Electric Company, whose appeal is being litigated contemporaneously with this appeal.

Reliance gearbox to Dalena Farms for the super sack conveyor belt system. Plaintiff did not get his hand caught in the motor or gearbox supplied by Kaman.

Kaman initially contended plaintiff's discovery responses had not identified any component part Kaman supplied that caused or contributed to plaintiff's injury, even though Kaman had successfully moved for further responses and plaintiff had provided them. In opposition, plaintiff identified the Baldor motor and Dodge Reliance gearbox as components of the conveyor belt system that were supplied by Kaman. He argued that Kaman failed to warn of or guard against dangerous propensities of the conveyor belt system. Kaman replied that plaintiff still had not identified any component supplied by Kaman that caused or contributed to plaintiff's injury and argued it could not be held liable for any defect in the conveyor belt system, because Kaman did not design or manufacture it.

Applying the rule that "a supplier of a non-defective component part is not liable for an injury from the finished product where the supplier did not have any involvement in the design, manufacture or distribution of the finished product and the part supplied was not defective," the court granted Kaman's motion.[2] The court noted it was undisputed that plaintiff did not get his hand caught in the motor or gearbox supplied by Kaman, and Kaman did not participate in the design of the conveyor belt system. The court concluded plaintiff had not raised a triable issue of material fact that Kaman supplied a defective part that was used in the conveyor belt system that caused plaintiff's injury or that Kaman designed or assembled the conveyor belt system. Plaintiff appeals, contending he raised triable issues of material fact.

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[2] The trial court granted the motion based on both procedural and substantive grounds. We choose to review the ruling on the substantive grounds.

DISCUSSION

I. Summary Judgment

Summary judgment is granted when no triable issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) In moving for summary judgment, a "defendant … has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action … cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) To meet his burden, a defendant may present evidence that conclusively negates an element of the plaintiff's cause of action, or he may "present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence--as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855 (*Aguilar*).) A defendant may show plaintiff does not possess and cannot reasonably obtain evidence needed to support plaintiff's claims by presenting plaintiff's "factually devoid" interrogatory responses. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 576, 592-593; *Aguilar*, *supra*, at p. 854, fn. 22.) Once the moving defendant has met his initial burden, "the burden shifts to the plaintiff … to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(2).)

"As a summary judgment motion raises only questions of law regarding the construction and effect of supporting and opposing papers, this court independently applies the same three-step analysis required of the trial court. We identify issues framed by the pleadings; determine whether the moving party's showing established facts that negate the opponent's claim and justify a judgment in the moving party's favor; and if it does, we finally determine whether the opposition demonstrates the existence of a triable, material factual issue. [Citations.]" (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1342.) We review the trial court's rulings on evidentiary

objections by applying an abuse of discretion standard. (*Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694.)

II. Product Liability

All of plaintiff's causes of action are premised on the existence of a defect in or a foreseeable risk of harm posed by the super sack conveyor belt system or its component parts. "One engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to persons or property caused by the defect." (Rest.3d Torts, Products Liability, § 1.) Liability may be premised on theories of strict liability, negligence, or breach of warranty. (See Rest.3d Torts, Products Liability, § 1, com. a, pp. 5-8.) Three types of product defects have been identified:

> "A product is defective when, at the time of sale or distribution, it contains a manufacturing defect**,** is defective in design, or is defective because of inadequate instructions or warnings. A product: [¶] (a) contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product; [¶] (b) is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe; [¶] (c) is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings renders the product not reasonably safe." (Rest.3d Torts, Products Liability, § 2; see also *Taylor v. Elliott Turbomachinery Co. Inc.* (2009) 171 Cal.App.4th 564, 577 (*Taylor*).)

Kaman successfully demonstrated that plaintiff's interrogatory responses did not identify any product supplied by Kaman, and so they did not identify any product supplied by Kaman that caused or contributed to plaintiff's injury. In opposition to

Kaman's motion, plaintiff asserted Kaman supplied a motor and a gearbox to Dalena Farms for use in the super sack conveyor belt system.

Plaintiff did not present any evidence or argument that the motor or gearbox contained a manufacturing defect or that any such defect caused or contributed to his injury; he admitted his hand did not get caught in either the motor or the gearbox. In his reply brief, plaintiff acknowledges that the gravamen of his case is not that there was a defective component part in the conveyor belt system.

In his opposition to Kaman's motion, plaintiff seemed to argue there was a design defect in the motor and gearbox, or there was a failure to warn of their dangerous propensities. Plaintiff argued Kaman "had a duty to supply component parts either that were sufficiently equipped for the intended use or had sufficient warnings to prevent someone from being harmed in the manner in which plaintiff was harmed." Additionally, plaintiff seemed to contend Kaman failed to provide suitable warnings about the dangerous propensities of the conveyor belt system. Plaintiff presented facts suggesting the design of the conveyor belt system was defective because it failed to include a guard where plaintiff was injured, or the conveyor belt system was defective due to a failure to warn of the risk of the type of injury suffered by plaintiff. Thus, the issues raised by the summary judgment motion involved whether the motor and gearbox supplied by Kaman were defective because of defective design or inadequate instructions or warnings, and whether Kaman could be held liable for any defect in the conveyor belt system, such as a failure to include a guard or to warn of the danger of getting one's hand caught at the end of the belt.

A. Motor and gearbox - defects in design

The design of a product may be found to be defective if "the risk of danger inherent in the challenged design outweighs the benefits of such design" or if the design fails to satisfy "ordinary consumer expectations as to safety in its intended or reasonably foreseeable operation." (*Barker v. Lull Engineering Co*. (1978) 20 Cal.3d 413, 430, 431.)

A manufacturer is liable only when a defect in its product was a legal cause of injury, that is, when it is a substantial factor in producing the injury. (*Soule v. General Motors Corp*. (1994) 8 Cal.4th 548, 572.)

Kaman presented facts and evidence, which plaintiff did not dispute, showing that Dalena Farms constructed the super sack conveyor belt system, and its principal, Joe Dalena, primarily designed it. Kaman asserted as undisputed fact number 21 that plaintiff's responses to special interrogatories "did not identify any parts supplied by Kaman to Dalena Farms that caused or contributed to the subject accident." It cited in support plaintiff's response to an interrogatory that asked him to identify each product distributed by Kaman that he contended caused or contributed to his injury. The interrogatory response referred to unidentified "invoices" and asserted plaintiff "was injured at a pinch point location on the conveyor belt system, that there were no warning[] signs, decals, or any other type of document warning of the pinch point location." As Kaman asserted, plaintiff's interrogatory response did not identify any product of Kaman that caused the incident that injured plaintiff.

Plaintiff's response to Kaman's undisputed fact number 21 did not present any evidence disputing this fact. Without amending his interrogatory response,[3] plaintiff identified in his listing of other undisputed and disputed facts a Baldor motor and a Dodge Reliance gearbox as products supplied by Kaman for the super sack conveyor belt system. Although plaintiff seemed to contend that the motor and gearbox supplied by Kaman were defective in design, plaintiff included no facts in his separate statements

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3 A plaintiff has a duty to give answers to interrogatories that are "as complete and straightforward as the information reasonably available to the responding party permits." (Code Civ. Proc., § 2030.220, subd. (a).) His response "must 'state the truth, the whole truth, and nothing but the truth.'" (*Guzman v. General Motors Corp*. (1984) 154 Cal.App.3d 438, 442. "[A] party may serve an amended answer to any interrogatory that contains information subsequently discovered, inadvertently omitted, or mistakenly stated in the initial interrogatory." (Code Civ. Proc., § 2030.310, subd. (a).)

pertaining to the design of the motor or gearbox. He did not identify a design defect in either product. He presented no facts or evidence demonstrating there was anything in the design of the motor or gearbox that posed a foreseeable risk of harm to the user. He presented no facts or evidence showing anything in the design of the motor or gearbox was a substantial factor in causing plaintiff's injury. He admitted he did not get his hand caught in the motor or the gearbox. Consequently, plaintiff failed to raise a triable issue of fact to support a claim that there was a defect in the design of the motor or gearbox supplied by Kaman, or that any defect in the design of the products supplied by Kaman caused or contributed to his injury.

B. Motor and gearbox - failure to warn

"[A] product, though faultlessly made, may nevertheless be deemed defective … if it is unreasonably dangerous to place the product in the hands of the user without adequate warnings." (*Groll v. Shell Oil Co.* (1983) 148 Cal.App.3d 444, 448.) "Negligence law in a failure-to-warn case requires a plaintiff to prove that a manufacturer or distributor did not warn of a particular risk for reasons which fell below the acceptable standard of care, i.e., what a reasonably prudent manufacturer would have known and warned about.… The rules of strict liability require a plaintiff to prove only that the defendant did not adequately warn of a particular risk that was known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution." (*Anderson v. Owens-Corning Fiberglas Corp*. (1991) 53 Cal.3d 987, 1002.)

Thus, the product manufacturer's or supplier's duty to warn arises when *a particular risk* is posed by use of the product. Although plaintiff asserted Kaman failed to warn of dangerous propensities, he did not identify any particular risk or dangerous propensity of the motor or gearbox about which Kaman should have warned users. He did not assert warnings should have been, but were not, placed on the motor or gearbox. Instead, the only danger or risk he complained of was the danger of getting one's hand

caught at the end of the conveyor belt. Kaman presented evidence the motor and gearbox were not located at the end of the conveyor belt where plaintiff's hand was injured. Plaintiff cited no contradictory evidence. He admitted his hand was not caught in the motor or gearbox.

Plaintiff mentioned in his argument the "speeds and gearing for the electric motor and gearbox supplied by KAMAN to run the speed of the conveyor belt system." His separate statements did not include any facts or supporting evidence concerning the speed or gearing of the motor or gearbox, or the speed of the conveyor belt. He presented no evidence that the speed of the motor or conveyor belt contributed in any way to the incident in which he was injured.

To the extent plaintiff's claims were based on allegations of defects in the design of, or failure to warn of a particular risk of, the motor and gearbox supplied by Kaman, plaintiff failed to raise a triable issue of fact in response to Kaman's showing that plaintiff could not establish the elements of a defect or a particular risk and legal cause.

C. Conveyor belt system - liability for defects or failure to warn

In his separate statements of undisputed and disputed facts, plaintiff included facts that suggested he contended Kaman should be liable for the defective design of the finished conveyor belt system and for failing to provide warnings, or to advise Dalena Farms to provide warnings, of the danger of getting one's hand caught at the end of the super sack conveyor belt. Plaintiff presented as undisputed facts statements that there were "no warning signs, decals, placards or anything about any risk or danger in working on the conveyor belt." He also presented statements, supported by an expert declaration, that a guard should have been placed at the end of the super sack conveyor belt and the absence of such a guard was a substantial factor in causing plaintiff's injury.

"Under the component parts doctrine, the manufacturer of a product component is not liable for injuries caused by the finished product into which the component is incorporated unless the component itself was defective at the time it left the

manufacturer. [Citations.]" (*Taylor, supra,* 171 Cal.App.4th at p. 584.) The doctrine applies to "'generic' or 'off-the-shelf' components, as opposed to those which are '"really a separate product with a specific purpose and use."' [Citations.]" (*Springmeyer v. Ford Motor Co.* (1998) 60 Cal.App.4th 1541, 1554.) The doctrine also applies to components manufactured to the buyer's specifications, as long as the component manufacturer "does not substantially participate in the integration of the component into the design of the [finished] product." (*Taylor,* at pp. 584-585; Rest.3d Torts, Products Liability, § 5, com. e, p. 135.) Two policy considerations underlie the component part rule. First, requiring the supplier of a multi use component to assure the safety of its component as used in another company's finished product """would require suppliers to 'retain an expert in the client's field of business to determine whether the client intends to develop a safe product.'" [Citation.] Suppliers of "products that have multiple industrial uses" should not be forced "to retain experts in a huge variety of areas in order to determine the possible risks associated with each potential use." [Citation.] A second, related rationale is that "finished product manufacturers know exactly what they intend to do with a component or raw material and therefore are in a better position to guarantee that the component or raw material is suitable for their particular applications." [Citations.]' [Citations.]" (*Taylor,* at p. 584.)

The Restatement Third of Torts states the rule thus:

> "One engaged in the business of selling or otherwise distributing product components who sells or distributes a component is subject to liability for harm to persons or property caused by a product into which the component is integrated if:
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> "(a) the component is defective in itself, as defined in this Chapter, and the defect causes the harm; or
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> "(b)(1) the seller or distributor of the component substantially participates in the integration of the component into the design of the product; and

> "(2) the integration of the component causes the product to be defective, as defined in this Chapter; and
>
> "(3) the defect in the product causes the harm." (Rest.3d Torts, Products Liability, § 5.)

"The refusal to impose liability on sellers of nondefective components is expressed in various ways, such as the 'raw material supplier defense' or the 'bulk sales/sophisticated purchaser rule.' However expressed, these formulations recognize that component sellers who do not participate in the integration of the component into the design of the product should not be liable merely because the integration of the component causes the product to become dangerously defective." (Rest.3d Torts, Products Liability, § 5, com. a, pp. 130-131.) "A component seller who simply designs a component to its buyer's specifications, and does not substantially participate in the integration of the component into the design of the product, is not liable within the meaning of Subsection (b)." (Rest.3d Torts, Products Liability, § 5, com. e, p. 135; *Taylor, supra*, 171 Cal.App.4th at p. 585.)

Regarding a component supplier's duty to warn of dangers of the finished product, the Restatement Third of Torts explains:

> "The component seller is required to provide instructions and warnings regarding risks associated with the use of the component product. [Citation.] However, when a sophisticated buyer integrates a component into another product, the component seller owes no duty to warn either the immediate buyer or ultimate consumers of dangers arising because the component is unsuited for the special purpose to which the buyer puts it. To impose a duty to warn in such a circumstance would require that component sellers monitor the development of products and systems into which their components are to be integrated. [Citation.] Courts have not yet confronted the question of whether, in combination, factors such as the component purchaser's lack of expertise and ignorance of the risks of integrating the component into the purchaser's product, and the component supplier's knowledge of both the relevant risks and the purchaser's ignorance thereof, give rise to a duty on the part of the component supplier to warn of risks attending integration of the component into the purchaser's product." (Rest.3d Torts, Products Liability, § 5, com. b, p. 132.)

In *Lee v. Electric Motor Division* (1985) 169 Cal.App.3d 375 (*Lee*), plaintiffs sued after Mrs. Lee's hand became caught in a meat grinder and was crushed. Defendant designed, manufactured and sold the motor that was incorporated into the meat grinder, which was designed, manufactured and sold by Lasar Manufacturing Company. The summary judgment granted in favor of defendant was affirmed. Plaintiff contended the motor was defectively designed because it could have been built to stop immediately when it was turned off by attaching a brake or clutch, and if it had stopped immediately her injuries would have been less severe. The evidence submitted showed Lasar designed the meat grinder without any participation by defendant; Lasar ordered the motor it wanted from defendant without asking defendant's advice. (*Id*. at pp. 384-385.) The motor was a standard shelf item. (*Id*. at p. 387.) The court noted: "We have found no case in which a component part manufacturer who had no role in designing the finished product and who supplied a nondefective component part, was held liable for the defective design of the finished product. To the contrary, the cases relied on by defendant demonstrate a reluctance against imposing liability in this situation." (*Id*. at p. 385.)

Regarding plaintiff's allegation of failure to warn, the court stated: "[T]here is nothing to indicate that the motor in its use had unreasonably dangerous propensities not ordinarily discoverable by the user. The uncontradicted evidence shows that all motors, even 'brake motors,' do not stop immediately. There is no danger in the motor which would not have been obvious to a person of ordinary intelligence." (*Lee, supra*, 169 Cal.App.3d at p. 388, fn. omitted.)

Thus, the supplier of a component that is used by another in a finished product is not liable for injury caused by the finished product unless the component it supplied was defective and the defect caused the injury, or the supplier substantially participated in the integration of the component into the finished product, that integration rendered the finished product defective, and that defect caused the injury. (Rest.3d Torts, Products

Liability, § 5; *Lee, supra,* 169 Cal.App.3d at p. 385.) It was undisputed that Kaman was a distributor of products and supplied Dalena Farms with the motor and gearbox used in the super sack conveyor belt system. The motor and gearbox were off-the-shelf units, not specifically designed for the super sack conveyor belt system. Kaman supplied the items based on the size and dimensions of the conveyor system provided by Dalena Farms. Dalena Farms' principals designed the super sack conveyor belt system, without the assistance of anyone else; its employees constructed the system. As discussed previously, in response to Kaman's motion, plaintiff did not identify any defect in the motor or gearbox, and did not present evidence that any such defect existed or was a substantial factor in causing plaintiff's injury. Because there was no evidence the components supplied by Kaman were defective, and it was undisputed that Kaman did not participate in the design or construction of the conveyor belt system in which those components were used, there was no triable issue of material fact regarding whether liability could be imposed on Kaman as a component part supplier. Additionally, plaintiff did not provide any facts or supporting evidence to show that integration of the motor or gearbox into the finished conveyor belt system caused the conveyor belt to be defective, or that the resulting defect caused plaintiff's injury. The only defect plaintiff identified was the failure to place a guard at the end of the conveyor belt to keep users from getting their hands caught in the belt, or the failure to place warnings of that danger on the super sack conveyor belt system.

Plaintiff appears to argue that the component part supplier rule applies differently here because Dalena Farms was not a "sophisticated user." The sophisticated user rule is an exception to the manufacturer's general duty to warn. (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 61.) The general rule is that manufacturers have a duty to warn consumers about the hazards inherent in their products. (*Id*. at p. 64.) The sophisticated user defense exempts manufacturers from this obligation when the product user is a sophisticated user who already knows or should know of the potential dangers of

the product. (*Id*. at p. 65.) "The rationale supporting the defense is that 'the failure to provide warnings about risks already known to a sophisticated purchaser usually is not a proximate cause of harm resulting from those risks suffered by the buyer's employees or downstream purchasers.' [Citation.] This is because the user's knowledge of the dangers is the equivalent of prior notice. [Citation.]" (*Ibid*.)

The Restatement Third of Torts indicates courts have not yet determined whether "the component purchaser's lack of expertise and ignorance of the risks of integrating the component into the purchaser's product," combined with other factors, would "give rise to a duty on the part of the component supplier to warn of risks attending integration of the component into the purchaser's product." (Rest.3d Torts, Products Liability, § 5, com. b.) In this case, it is immaterial whether a component supplier owes a duty to an unsophisticated buyer to warn of risks involved in integrating the component into the buyer's finished product, or whether Dalena Farms is, in fact, an unsophisticated buyer. Even if a legal rule imposing such a duty to warn existed, plaintiff presented no evidence that there was any risk involved in integrating the motor or gearbox into the conveyor belt system that would have given rise to such a duty; he also presented no evidence that any such failure to warn was a legal cause of plaintiff's injury. Consequently, even if Dalena Farms was an unsophisticated buyer, plaintiff failed to raise a triable issue of material fact to counter Kaman's showing that plaintiff could not establish essential elements of his causes of action.

III. Objections to Expert Declaration

"We review the trial court's evidentiary rulings on summary judgment for abuse of discretion. [Citations.]" (*DiCola v. White Brothers Performance Products, Inc*. (2008) 158 Cal.App.4th 666, 679.) Because he is challenging the ruling, plaintiff bears the burden of establishing an abuse of discretion. (*Ibid.*) We cannot substitute our judgment of the correct result for that of the trial court; we will interfere with the trial court's decision only if plaintiff shows that the ruling exceeds the bounds of reason, that is, that

"'"no judge could reasonably have made the order that he did."' [Citation.]" (*Ibid*.) "Plaintiffs' showing will be 'insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion.' [Citation.]" (*Id*. at pp. 679-680.)

Plaintiff contends the trial court abused its discretion by sustaining objections to the declaration of his expert, Thomas J. Ayres, a human factors consultant. The declaration identified the materials Ayres reviewed, then stated his opinions in paragraph 4. These included: (1) Kaman participated in the design of the conveyor system by selecting components from catalogs and selling them to Dalena Farms; (2) Kaman did not sell the system intact, so it "could not count on the manufacturer to provide a reasonably safe design or appropriate safety information for the purchaser or end user"; (3) because of visits to the Dalena Farms site, Kaman "potentially was aware of the final design and the lack of safety sophistication" of Dalena Farms and could have "pointed to the lack of appropriate guarding or safety information on the system"; and (4) "it is reasonably likely that [Dalena Farms] would have followed advice to guard the in-running conveyor pinch point."

Kaman objected that (1) the statement that it participated in the design of the conveyor lacked foundation and was an improper subject for expert opinion; (2) the statement that Kaman could not count on a manufacturer to provide a reasonably safe design and safety information was without factual basis and speculative; (3) the statement Kaman could have pointed to the lack of guarding or safety information was irrelevant because Kaman owed no duty to warn; and (4) the statement that Dalena Farms would likely have followed Kaman's advice to guard the pinch point was speculative. The court sustained the objections on the grounds asserted and, as to objection (3), also concluded Ayres was "not qualified to opine as to the duty of a supplier of component parts to warn of safety defects to a finished product."

Plaintiff has not shown that the trial court's ruling on these objections exceeded all bounds of reason. An expert may testify to his opinion if the opinion is:

> "(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and
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> "(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates." (Evid. Code, § 801.)

The court did not abuse its discretion by finding statement (1) was not a proper subject for expert opinion. It is not a matter beyond common experience. Additionally, Ayres' conclusion that Kaman participated in the design of the conveyor belt system lacked factual foundation; it directly contradicted both a fact stated by plaintiff in his separate statement and a fact presented in Kaman's separate statement of facts, which plaintiff designated as undisputed–that Dalena Farms designed the super sack conveyor belt system without assistance. Ayres' statements (2) and (4) constituted speculative predictions of what Dalena Farms might have done. Statement (3) was irrelevant; the ability to warn of a defect does not create a duty, and is irrelevant unless such a duty exists.

Even if paragraph 4 of Ayres' declaration were considered, it would not change the outcome of the motion. Even if Kaman participated in the design of the conveyor belt system by choosing the motor and gearbox for it, Kaman would not be liable unless integration of those components into the conveyor belt system rendered it defective and that defect injured plaintiff. Plaintiff presented no evidence to support such a theory. Plaintiff presented no evidence the pinch point or other defect was a defect in the motor or gearbox supplied by Kaman, and no evidence the pinch point or other defect in the conveyor belt system was the result of integration of the motor or gearbox into the conveyor belt system. Consequently, Ayres' conclusions could not raise a triable issue of material fact.

Plaintiff also contends the trial court should have overruled Kaman's objections because the objections failed to comply with rule 3.1354 of the California Rules of Court. Rule 3.1354 requires that written objections to evidence presented in support of or opposition to a summary judgment motion be made in a particular format and be accompanied by a proposed order on each objection. Kaman's objections did not precisely follow the prescribed format, and were not accompanied by a proposed order.

Plaintiff has not demonstrated the trial court's ruling was an abuse of its discretion. The noncompliance with the rule was minor, and the objections adequately identified the matter to which Kaman objected. The court addressed the substance, rather than the form, of the objections. We find no error.

IV. Objections to Kaman's Evidence in Reply

Plaintiff contends the trial court abused its discretion when it failed to rule on his objection that the declaration of Edward Duval was improperly filed with Kaman's reply papers, and instead continued the hearing of the motion and permitted the parties to file further papers. Plaintiff's entire argument in support of this contention is the statement: "Appellant maintains that is error as a matter of law, and the court should have denied the Summary Judgment Motion requiring Kaman to show that they had new facts, or provide a different Summary Judgment Motion." "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) Because plaintiff's point is not supported by reasoned argument or citation of authority, we treat it as waived.

Plaintiff also contends the court should have sustained his objection that Duval's declaration contradicted his deposition testimony. The court overruled that objection, finding the declaration did not appear to contradict Duval's deposition testimony. The trial court's judgment is presumed to be correct on appeal, and the burden of affirmatively demonstrating error is on the appellant. (*State Farm Fire & Casualty Co. v.*

Pietak (2001) 90 Cal.App.4th 600, 610.) "'It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.' [Citations.] If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived. [Citation.]" (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

In his opening brief, plaintiff cited the court to the pages of the clerk's transcript where Duval's declaration appears, and specified that paragraphs 5 through 10 of that declaration contradict his deposition testimony. In his reply brief, he identified all of the pages of Duval's deposition transcript that he cited in support of his undisputed facts as the testimony that Duval's declaration contradicted. Nowhere does he match up any specific statement in the declaration, or even any specific paragraph, with the page of the deposition transcript containing the testimony he contends was contradicted.

Even if we were to overlook any waiver arising out of plaintiff's failure to specify where the contradiction appears, we would find no error. We did not find in paragraphs 5 through 10 of Duval's declaration any contradiction of the portions of Duval's deposition testimony identified in plaintiff's reply brief. The trial court did not abuse its discretion when it overruled plaintiff's objections to the Duval declaration.

V. Plaintiff's Request for Judicial Notice

On April 15, 2009, plaintiff filed a motion for judicial notice, requesting that this court take judicial notice of matter in the record of a related pending appeal, *Flores v. Baldor Electric Company et al.* (No. F055799) (*Baldor*). The *Baldor* appeal arises out of the same trial court case as the current appeal.

On appeal, the court may take judicial notice of court records. (Evid. Code, §§ 452, subd. (d), 459, subd. (a)). Plaintiff requests judicial notice of a separate statement of undisputed and disputed facts he filed in support of his motion for new trial after the court granted summary judgment in favor of co-defendants, Baldor Electric

Company and Reliance Electric Company. The separate statement is part of the record in the *Baldor* appeal. The separate statement was filed with the trial court almost five months after judgment was entered in favor of Kaman. It was not before the court when the court considered and ruled on Kaman's motion for summary judgment.

"In deciding the question raised by an appeal, a reviewing court will ordinarily look only to the record made in the trial court. While the reviewing court may take judicial notice of matters not before the trial court, it need not do so. [Citation.]" (*Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325.) It "may properly decline to take judicial notice … of a matter which should have been presented to the trial court for its consideration in the first instance." (*Id*. at pp. 325-326.)

Additionally, "[a]lthough a court may judicially notice a variety of matters [citation], only *relevant* material may be noticed." (*Mangini v. R. J. Reynolds Tobacco Co*. (1994) 7 Cal.4th 1057, 1063 (*Mangini*), overruled on another ground in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.) Even where Evidence Code sections 451 through 453 appear to make judicial notice mandatory, their provisions "'are subject to the qualification that the matter to be judicially noticed must be relevant [citation].'" (*Mangini*, *supra*, at p. 1063.)

In his request for judicial notice, plaintiff has not explained in what way the separate statement filed with his motion for new trial of his claims against Baldor and Reliance is relevant to the appeal of the summary judgment granted to Kaman; in particular he has not explained how a separate statement, without supporting evidence, would be relevant to this appeal. He also has not explained why any facts set forth in that separate statement were not presented to the court with his opposition to the Kaman motion. We note that, because the separate statement was not filed with the trial court until long after judgment was entered in favor of Kaman, Kaman was never afforded an opportunity to respond to it. Plaintiff also has not identified any unusual circumstances involved in this case that would warrant a departure from the general rule that the

appellate court will only consider the record made in the trial court. Accordingly, we deny plaintiff's motion for judicial notice.

DISPOSITION

The judgment is affirmed. Kaman is awarded its costs on appeal.

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HILL, J.

WE CONCUR:

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DAWSON, Acting P.J.

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KANE, J.